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CM REO Trust

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF CALIFORNIA

In Re:	)	CASE: 10-13718-B-7
)	
MARIO GAMA GONZALEZ aka MARIO	)	CHAPTER 7
GONZALEZ GAMA and JANIE ELIZABETH)	
REYNA	)	REF.: ASW-1
)	
Debtors.	)	MOTION FOR RELIEF FROM
	)	THE AUTOMATIC STAY AND
	)	DECLARATION OF JO-ANN
	)	GOLDMAN IN SUPPORT
	)	THEREON
)	
	)	DATE: 06/03/10
	)	TIME: 11:00am
	)	CTRM: 1ST FL
	)	U.S. Bankruptcy Court
	)	1300 18th Street
	)	Bakersfield, CA 93301

The Motion of CM REO Trust respectfully shows as follows:

1. This Court has jurisdiction over this proceeding pursuant to 28 U.S.C. Sections 157 and 1334.

2. This Motion is brought pursuant to Local Rule 9014-1 (f)(1)(ii) written opposition, if any, to the granting of the Motion shall be in writing and shall be served on the moving party and filed with the Clerk by the responding party at least fourteen (14) days preceding the noticed date

1 of the hearing. Unless written opposition and supporting
2 evidence are timely filed with the Court, without good
3 cause, no party will be heard in opposition to the Motion at
4 oral argument. Failure of the responding party to timely
5 file written opposition may be deemed a waiver of any
6 opposition to the granting of the Motion.

7 Opposition to the Motion shall be served on counsel for
8 Movant as follows:

9 THE WOLF FIRM
10 2955 Main Street, Second Floor
Irvine, CA 92614

11 3. On April 8, 2010, a petition under Chapter 7 of the
12 Bankruptcy Code was filed by the Debtors.

13 4. JEFFREY M. VETTER is the Chapter 7 Trustee for this
14 case.

15 5. Movant is, and at all times herein mentioned was a
16 corporation organized and existing under the laws of the
17 United States.

18 6. Movant is the beneficiary under a Deed of Trust by
19 way of assignment which secures a Promissory Note ("Note")
20 in the principal sum of \$210,000, with the Note all due and
21 payable on January 1, 2037. The Note and Deed encumber real
22 property commonly known as:

23 715 Baldwin Farms Drive, Bakersfield, CA 93307
24 ("Property")

25 and legally described as set forth in the Deed of Trust,
26 which is attached to the Declaration of JO-ANN GOLDMAN.
27

1 7. The beneficial interest under the Deed of Trust is
2 currently held by Movant by way of assignment. See
3 Declaration of JO-ANN GOLDMAN.

4 8. There was a default under the terms of the Note and
5 Deed of Trust and on November 12, 2009, Movant caused to be
6 recorded a Notice of Default and Election to Sell.

7 9. On February 16, 2010, Movant caused to be recorded
8 a Notice of Sale.

9 10. The Property is not Debtors' principal residence.

10 11. As of April 16, 2010, the Debtors have failed to
11 tender 16 of the contractual payments which have fallen due
12 under the Note and Deed of Trust.

13 12. The total amount due under Note and Deed of Trust
14 as of April 16, 2010, exclusive of attorneys fees and costs,
15 was approximately \$213,662.64. See Statement of
16 Indebtedness attached hereto as Exhibit "1".

17 13. Movant requests the Court take Judicial Notice
18 that the Debtors' Schedule "A" provides the fair market
19 value of the Property to be approximately \$98,500.00. A
20 true and correct copy of Schedule "A" is attached hereto as
21 Exhibit "2" and incorporated by reference.

22 14. Movant requests the Court take Judicial Notice
23 that the Debtors' Statement of Intentions provides the
24 Property is to be surrendered. A true and correct copy of
25 the Statement of Intentions is attached hereto as Exhibit
26 "3" and incorporated by reference.

1 15. Due to the liens, encumbrances and arrearages
2 existing against the Property, and due to current market
3 trends and costs of sale, the Debtors do not have any equity
4 in the Property.

5 16. The Debtors have no reasonable prospect for
6 reorganization and the Property is not necessary for an
7 effective reorganization.

8 17. Movant does not have, and has not been offered,
9 adequate protection for its interest in the Property and the
10 passage of time will result in irreparable injury to
11 Movant's interest in the Property including, but not limited
12 to, loss of interest and opportunity.

13 18. For all the reasons set forth herein, there is
14 cause for relief from stay including, but not limited to,
15 lack of adequate protection and the Debtors' failure to make
16 the required Deed of Trust payments.

17 WHEREFORE, Movant prays for the judgment against
18 Respondents as follows:

19 (1) That the automatic stay be terminated or annulled
20 so that Movant may exercise or cause to be exercised any and
21 all rights under its Note and/or Deed of Trust and any and
22 all rights after the foreclosure sale, including, but not
23 limited to, the right to consummate foreclosure proceedings
24 on the property and the right to proceed in unlawful
25 detainer;

26 (2) For reasonable attorneys' fees;
27

1 (3) For the waiver of the 14 day stay pursuant to
2 Bankruptcy Rule 4001(a)(3).

3 (4) For such other and further relief as the Court
4 deems just and proper.

5 Dated: April 28, 2010

6
7 /s/ Alan Steven Wolf
8 ALAN STEVEN WOLF
9 Attorneys for Movant
10 CM REO Trust
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EXHIBIT 1

MOVANT'S STATEMENT OF INDEBTEDNESS

Debtors: GONZALEZ
CASE NO.: 10-13718-B-7
PROPERTY ADDRESS: 715 Baldwin Farms Drive
Bakersfield, CA 93307

A. APPROX. PRINCIPAL DUE AS OF April 16, 2010:

1st trust deed SELECT PORTFOLIO = \$ 190,988.34

TOTAL = \$ 190,988.34

B. APPROX. DELINQUENCY ON ABOVE INDEBTEDNESS AS OF 04/16/10:

Movant's first trust deed payments and late charges:

16 payment(s) at \$ 1,268.85 = \$ 20,301.60

Accrued Late Charges \$ 388.27

Escrow Advance \$ 2,266.20

Less Funds in Suspense \$ -440.00

Miscellaneous \$ 158.23

TOTAL \$ 22,674.30

C. VALUE OF PROPERTY: \$ 98,500.00

D. LESS TOTAL OF PRINCIPAL AND DELINQUENCY: \$ 213,662.64

E. GROSS EQUITY (D-C)*: \$ -115,162.64

EXHIBIT 2

In re **Mario Gama Gonzalez,
Janie Elizabeth Reyna**

Case No. _____

Debtors

SCHEDULE A - REAL PROPERTY

Except as directed below, list all real property in which the debtor has any legal, equitable, or future interest, including all property owned as a cotenant, community property, or in which the debtor has a life estate. Include any property in which the debtor holds rights and powers exercisable for the debtor's own benefit. If the debtor is married, state whether husband, wife, both, or the marital community own the property by placing an "H," "W," "J," or "C" in the column labeled "Husband, Wife, Joint, or Community." If the debtor holds no interest in real property, write "None" under "Description and Location of Property."

Do not include interests in executory contracts and unexpired leases on this schedule. List them in Schedule G - Executory Contracts and Unexpired Leases.

If an entity claims to have a lien or hold a secured interest in any property, state the amount of the secured claim. See Schedule D. If no entity claims to hold a secured interest in the property, write "None" in the column labeled "Amount of Secured Claim." If the debtor is an individual or if a joint petition is filed, state the amount of any exemption claimed in the property only in Schedule C - Property Claimed as Exempt.

Description and Location of Property	Nature of Debtor's Interest in Property	Husband, Wife, Joint, or Community	Current Value of Debtor's Interest in Property, without Deducting any Secured Claim or Exemption	Amount of Secured Claim
Residence at 715 Baldwin Farms Dr., Bakersfield, CA	Fee simple	C	98,500.00	190,988.00

0 continuation sheets attached to the Schedule of Real Property

Sub-Total > **98,500.00** (Total of this page)

Total > **98,500.00**

(Report also on Summary of Schedules)

EXHIBIT 3

**United States Bankruptcy Court
Eastern District of California**

In re **Mario Gama Gonzalez
Janie Elizabeth Reyna**

Debtor(s)

Case No.

Chapter

7

CHAPTER 7 INDIVIDUAL DEBTOR'S STATEMENT OF INTENTION

PART A - Debts secured by property of the estate. (Part A must be fully completed for **EACH** debt which is secured by property of the estate. Attach additional pages if necessary.)

Property No. 1	
Creditor's Name: Wyrhsr Mtg	Describe Property Securing Debt: Residence at 715 Baldwin Farms Dr., Bakersfield, CA
Property will be (check one): <input checked="" type="checkbox"/> Surrendered <input type="checkbox"/> Retained	
If retaining the property, I intend to (check at least one): <input type="checkbox"/> Redeem the property <input type="checkbox"/> Reaffirm the debt <input type="checkbox"/> Other. Explain _____ (for example, avoid lien using 11 U.S.C. § 522(f)).	
Property is (check one): <input type="checkbox"/> Claimed as Exempt <input checked="" type="checkbox"/> Not claimed as exempt	

PART B - Personal property subject to unexpired leases. (All three columns of Part B must be completed for each unexpired lease. Attach additional pages if necessary.)

Property No. 1		
Lessor's Name: -NONE-	Describe Leased Property:	Lease will be Assumed pursuant to 11 U.S.C. § 365(p)(2): <input type="checkbox"/> YES <input type="checkbox"/> NO

I declare under penalty of perjury that the above indicates my intention as to any property of my estate securing a debt and/or personal property subject to an unexpired lease.

Date April 7, 2010

Signature /s/ Mario Gama Gonzalez
Mario Gama Gonzalez
 Debtor

Date April 7, 2010

Signature /s/ Janie Elizabeth Reyna
Janie Elizabeth Reyna
 Joint Debtor